

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

Rosario Zevallos,

Debtor.

Bankruptcy Case No. 08-16119

FIA Card Services, N.A. (f.k.a. MBNA America
Bank, N.A.),

Plaintiff,

v.

Rosario Zevallos,

Defendant.

ADV. NO. 09-

**COMPLAINT OBJECTING TO DISCHARGEABILITY OF INDEBTEDNESS
(11 U.S.C. § 523)**

COMES NOW Plaintiff, FIA Card Services, N.A. (f.k.a. MBNA America Bank, N.A.)
(Plaintiff), by and through its attorney of record, Lisa M. Shank, to allege and complain as
follows:

I. PARTIES AND JURISDICTION

1. Plaintiff is a national association and commercial banking institution entitled to bring this action.
2. Defendant filed a Chapter 7 bankruptcy petition in Case No. 08-16119 on 10/03/2008.
3. Jurisdiction is vested in this proceeding pursuant to 28 U.S.C. § 157, 28 U.S.C. § 1334, and 11 U.S.C. § 523.

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4. This adversary proceeding is a core matter.
5. Plaintiff is a creditor in the above referenced Chapter 7 bankruptcy proceeding.

II. CAUSE OF ACTION

6. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 5, above.
7. Defendant has a charge account with Plaintiff under a charge account with FIA Card Services, N.A. (f.k.a. MBNA America Bank, N.A.), Account No. XXXXXXXXXXXXX6351 ("Account").
8. Defendant incurred charges and cash advances on this account totaling \$10,608.34, including interest, as of 10/03/2008, the date the bankruptcy petition was filed.
9. Between 06/22/2008 and 08/11/2008, the Defendant accumulated \$9,613.00 in retail charges.
10. All charges to the account in the amount of \$7,154.00 were made within the presumption period as defined by 11 U.S.C. § 523 (a)(2)(C).
11. As a result of the above activity, the account credit limit was exceeded.
12. Defendant's debt is a "consumer debt", as defined by 11 U.S.C. § 101(8).
13. By obtaining and/or accepting an extension of credit from Plaintiff and incurring charges on the account, Defendant represented an intention to repay the amounts charged.
14. Plaintiff reasonably relied on the representations made by Defendant.
15. Defendant incurred the debts when Defendant had no ability or objective intent to repay them.

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16. Defendant obtained credit extended from Plaintiff by false pretenses, false representations and/or actual fraud.
17. As a result of Defendant's conduct, Plaintiff has suffered damages in the amount of \$9,613.00.
18. The foregoing actions of the Defendant are in violation of 11 U.S.C. §523(a)(2)(A) and Plaintiff is entitled to a presumption of non-dischargeability pursuant to 11 U.S.C. § 523(a)(2)(C) of the charges in the account in the amount of \$9,613.00.
19. The credit agreement between the Defendant and the Plaintiff provides that in the event of nonpayment and/or default, Plaintiff may recover its costs, attorneys' fees and interest.

III. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief:

1. A monetary judgment against Defendant in the amount of \$9,613.00, plus accrued interest at the contractual rate from and after 10/03/2008, plus additional interest at the contractual rate, which will continue to accrue until the date of judgment herein;
2. An order determining that such debt is non-dischargeable under 11 USC § 523(a)(2);
3. An order awarding Plaintiff its attorneys' fees and costs incurred herein; and
4. An order awarding Plaintiff such additional relief as this Court deems just and equitable.

DATED January 9, 2009

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/s/ Lisa M. Shank

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